

STATE OF MICHIGAN
COURT OF APPEALS

BAYVIEW FINANCIAL TRADING GROUP LP,

Plaintiff-Appellant,

v

JACK MAVIGLIA and ABN AMRO
MORTGAGE GROUP INC.,

Defendants-Appellees.

UNPUBLISHED

October 25, 2005

No. 262158

Wayne Circuit Court

LC No. 04-416062-CH

Before: Cooper, P.J., and Fort Hood and Borrello, JJ.

PER CURIAM.

Plaintiff Bayview Financial Trading Group appeals as of right from a trial court order granting defendants Jack Maviglia and ABN AMRO Mortgage Group's motion for summary disposition pursuant to MCR 2.116(C)(7) based on res judicata in this action to quiet title. Although the trial court improperly precluded plaintiff's collateral attack on this basis, the court properly determined that plaintiff should have sought to set aside the judgment in the original action. We, therefore, affirm the court's dismissal of plaintiff's action to quiet title.¹

I. Factual and Procedural Background

In 1989, Donald and Mary Hall sold residential property in Redford Township to Kenneth Wilding on land contract. Mr. Wilding financed the land contract with Mortgage Corporation of America (MCA), which held the warranty deed and executed a mortgage upon the property in the Halls' favor. The record states that MCA defaulted on the mortgage in 1995. In 1996, the Halls foreclosed and then MCA paid off and discharged the mortgage.² MCA

¹ "A trial court's ruling which reaches the right result, although for the wrong reason, may be upheld on appeal." *Mulholland v DEC Int'l Corp*, 432 Mich 395, 411 n 10; 443 NW2d 340 (1989).

² It is not clear from the record what became of Mr. Wilding's interest in the property. It appears that he was to make payments to MCA in connection with the land contract and defaulted on that obligation.

subsequently sold the property to Mr. Maviglia on land contract, holding the warranty deed as security for a mortgage executed in its favor.

In 1999, MCA filed for bankruptcy. The bankruptcy court entered an order allowing MCA to accept a reduced pay-off from Mr. Maviglia on the land contract. In 2001, plaintiff purchased ten outstanding loans from the bankruptcy estate, including the loan secured by this mortgage. In connection with that sale, MCA was to transfer all deeds securing those loans. Plaintiff claims that the warranty deed for this property was lost and, therefore, was never recorded. In fact, plaintiff did not record any document to evidence its interest in this property. While the loan sale documents indicate that plaintiff took all of MCA's interests in this mortgage, the notice plaintiff sent to Mr. Maviglia represented only that it had become the loan servicing agent.

Mr. Maviglia asserted that he had paid off his indebtedness with MCA. However, upon notice from plaintiff that he was in default on his loan, Mr. Maviglia began making payments to plaintiff. In April of 2002, he filed suit to quiet title in the property against MCA and Mr. Wilding, the only parties with a recorded interest in the property. In that action, Mr. Maviglia alleged that MCA "gave" him the property, but failed to provide the deed. Neither MCA nor Mr. Wilding responded and the trial court entered a default judgment quieting title in favor of Mr. Maviglia. He subsequently executed a mortgage in ABN AMRO's favor, which was duly recorded. He also made substantial improvements to the property.

More than two years after the court quieted title in Mr. Maviglia's favor, plaintiff filed an independent action against defendants to quiet title in its favor in May of 2004, rather than moving to set aside this default judgment pursuant to MCR 2.603(D).³ Plaintiff alleged that Mr. Maviglia knew of its interest in the property and, therefore, improperly failed to name it as a defendant in the prior action. Plaintiff also alleged that Mr. Maviglia failed to inform the court that he had not obtained relief from the automatic stay in MCA's bankruptcy action before filing suit. Plaintiff further alleged that Mr. Maviglia intentionally defrauded the court by stating that he owned the property in fee simple, and that MCA foreclosed on the land contract with Mr. Wilding and "gave" the property to him. Accordingly, plaintiff asserted that the previous judgment was void. The trial court determined that plaintiff's claims were barred by res judicata and granted defendants' motion for summary disposition. The court found that plaintiff's claims should have been raised in a motion to set aside the default judgment.

II. Legal Analysis

Plaintiff challenges the trial court's determination that its claim to quiet title was barred by res judicata on several grounds. Plaintiff asserts that the prior action to quiet title was not decided on the merits and that it is not in privity with MCA. Plaintiff also contends that it was entitled to collaterally attack the previous judgment, as Mr. Maviglia failed to secure a waiver of

³ Plaintiff's action to quiet title was assigned to the same trial judge that presided over the original action.

the automatic stay in MCA's bankruptcy action before filing suit and as Mr. Maviglia made fraudulent representations in his complaint to quiet title.

We review “a trial court’s decision on a motion for summary disposition pursuant to MCR 2.116(C)(7) de novo to determine whether the moving party was entitled to judgment as a matter of law.”⁴ We also review a trial court’s determination that a claim is barred by res judicata de novo.⁵ When the appeal period has run, “the decision of a court having jurisdiction is final . . . and cannot be collaterally attacked.”⁶

The doctrine of res judicata is employed to prevent multiple suits litigating the same cause of action. The doctrine bars a second, subsequent action when (1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first. This Court has taken a broad approach to the doctrine of res judicata, holding that it bars not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not.^[7]

It is undisputed that the question of plaintiff’s interest in this property could have been resolved in the prior action to quiet title. Moreover, the prior judgment was clearly decided on the merits. It is well established that a default judgment is a judgment on the merits to which the doctrine of res judicata applies.⁸ Plaintiff contends that the prior judgment was not “on the merits” as Mr. Maviglia’s complaint did not set forth well-pled allegations.⁹ However, any alleged inadequacy in Mr. Maviglia’s complaint could have been remedied by directly attacking the prior judgment and does not merit invalidating that judgment in a subsequent action.¹⁰

Plaintiff concedes that it is a successor in interest to MCA in this property. However, plaintiff correctly asserts that it is not in privity with MCA, as it purchased this interest before

⁴ *Rinas v Mercier*, 259 Mich App 63, 67; 672 NW2d 542 (2003), quoting *Stoudemire v Stoudemire*, 248 Mich App 325, 332; 639 NW2d 274 (2001).

⁵ *Adair v State of Michigan*, 470 Mich 105, 119; 680 NW2d 386 (2004).

⁶ *AA Aircraft Co v Piper Aircraft Corp*, 159 Mich App 389, 393; 406 NW2d 304 (1987).

⁷ *Adair*, *supra* at 121 (internal citations omitted).

⁸ *Staple v Staple*, 241 Mich App 562, 572; 616 NW2d 219 (2000); *Detroit v Nortown Theatre, Inc*, 116 Mich App 386, 392; 323 NW2d 411 (1982).

⁹ See *American Central Corp v Stevens Van Lines, Inc*, 103 Mich App 507, 512; 303 NW2d 234 (1981) (a default serves as an admission by the defaulting party of all well-pled allegations).

¹⁰ See *In re Hatcher*, 443 Mich 426, 437; 505 NW2d 834 (1993) (finding that a court has subject matter jurisdiction “when the action is of a class that the court is authorized to adjudicate and the claim stated in the complaint is not clearly frivolous”); *Trost v Buckstop Lure Co*, 249 Mich App 580, 588; 644 NW2d 54 (2002) (finding that the failure of a plaintiff to plead a claim with the required degree of specificity does not deprive the court of jurisdiction over the subject matter).

the prior judgment was entered.¹¹ “Privity” has been defined in several ways. “In its broadest sense, privity has been defined as ‘mutual or successive relationships to the same right of property, or such an identification of interest of one person with another as to represent the same legal right.’”¹² “Privity between a party and a non-party requires both a ‘substantial identity of interests’ and a ‘working or functional relationship . . . in which the interests of the non-party are presented and protected by the party in the litigation.’”¹³ A “privity” has also been defined as “‘one who, after rendition of the judgment, has acquired an interest in the subject matter affected by the judgment through or under one of the parties, as by inheritance, succession, or purchase.’”¹⁴

Plaintiff purchased MCA’s interest in this property one year *before* Mr. Maviglia filed his suit to quiet title. The bankrupt MCA did not share plaintiff’s interest in the property. Therefore, MCA had no motive to protect plaintiff’s interests against an adverse claim of title. Accordingly, the trial court improperly determined that the doctrine of *res judicata* precluded plaintiff’s subsequent action. However, we need not reverse as the trial court properly determined that plaintiff’s claims should have been raised in the original action as a motion to set aside the default judgment.

An aggrieved party may seek to set aside a default judgment for any reason supporting relief under MCR 2.612. The grounds supporting relief from judgment include fraud upon the court, misrepresentation, misconduct by an adverse party, or the fact that a judgment is void.¹⁵ However, a motion for relief from judgment must be brought within a reasonable time. A motion alleging fraud, misrepresentation, or other misconduct must be brought within one year of the judgment.¹⁶ Pursuant to MCR 2.612(C)(3), a court may even consider an independent equitable action to relieve a party from a judgment.¹⁷ Specifically, the court rule provides:

This subrule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding; to grant relief to a

¹¹ As we find that the trial court erroneously determined that plaintiff was in privity with MCA on this ground, we decline to consider plaintiff’s contention that it was not in privity with MCA as it purchased its interest in this property from the bankruptcy estate, rather than directly from its predecessor.

¹² *Sloan v Madison Hgts*, 425 Mich 288, 295-296; 389 NW2d 418 (1986) (internal citation omitted).

¹³ *Phinisee v Rogers*, 229 Mich App 547, 553-554; 582 NW2d 852 (1998), quoting *SOV v Colorado*, 914 P2d 355, 360 (Colo, 1996), quoting *Public Service Co v Osmose Wood Preserving, Inc*, 813 P2d 785, 787 (Colo App, 1991).

¹⁴ *Sloan, supra* at 295-296, quoting *Howell v Vito’s Trucking & Excavating Co*, 386 Mich 37, 43; 191 NW2d 313 (1971).

¹⁵ MCR 2.612(C)(1).

¹⁶ MCR 2.612(C)(2).

¹⁷ See *Trost, supra* at 584-585.

defendant not actually personally notified as provided in subrule (B); or to set aside a judgment for fraud on the court.^[18]

While the rule does not limit the power of a court to entertain a subsequent action to relieve a party from a judgment,

five essential elements must be satisfied for a party to be entitled to independent equitable relief: (1) the judgment is one that ought not, in equity and good conscience, be enforced, (2) there is a valid defense to the alleged cause of action on which the judgment is founded, (3) fraud, accident, or mistake prevented the defendant from obtaining the benefit of the defense, (4) there was no negligence or fault on the part of the defendant, and (5) there is no adequate remedy available at law.^[19]

Equity does not support allowing plaintiff to collaterally attack the final judgment quieting title in Mr. Maviglia's favor. Plaintiff waited to file its action to quiet title for two years after the trial court rendered its prior judgment. Plaintiff has not stated any reason to justify its inaction within the appropriate period to bring a motion for relief from judgment in the original action. In that time, Mr. Maviglia remortgaged the property and made substantial improvements to his home. Moreover, it does not appear from the record that Mr. Maviglia had notice of plaintiff's actual interest in the property. Plaintiff notified Mr. Maviglia only that it had become the servicing agent of his loan with MCA. Plaintiff never recorded any document as evidence of its interest in this property to place Mr. Maviglia on notice pursuant to MCL 565.25. Plaintiff's absence from the prior suit was caused by its own negligence or fault in failing to record any documentation of its interest or to notify Mr. Maviglia of the true nature of its interest in the property. Therefore, the trial court properly denied plaintiff's attempt to invalidate its prior final judgment in the current case.

Affirmed.

/s/ Jessica R. Cooper
/s/ Karen M. Fort Hood
/s/ Stephen L. Borrello

¹⁸ MCR 2.612(C)(3). Although plaintiff did not specifically raise an argument based on this rule, its argument is, essentially, that the trial court has the power to consider its independent action as the previous judgment is void.

¹⁹ *Trost, supra* at 589.